

APPROVED: Meeting No. 26-91

ATTEST: *Sharon A. Gran*

MAYOR AND COUNCIL
ROCKVILLE, MARYLAND
Meeting No. 21-91

May 20, 1991

The Mayor and Council of Rockville, Maryland, convened in Public Hearing in the Council Chamber, Rockville City Hall, Maryland Avenue at Vinson Street, Rockville, Maryland, on May 20, 1991, at 7:30 p.m.

PRESENT

Mayor Douglas M. Duncan

Councilmember James F. Coyle

Councilmember Viola D. Hovsepian

Councilmember James T. Marrinan

Councilmember David Robbins

In attendance: City Manager Bruce Romer, City Clerk Sharon Gran and City Attorney Paul Glasgow.

Re: Public Hearing: Temporary
Use Permit to operate a
carnival, Montgomery County
Boys and Girls Club, Applicant.

The Mayor and Council conducted a public hearing regarding the application of the Montgomery County Boys and Girls Club to operate a carnival on the premises known as 725 Rockville Pike from June 19-23, 1991. The Mayor and Council heard all those persons as can be found in the official stenographic record. There being no other persons wishing to be heard, the Mayor closed the hearing, with the record to be left open for two weeks, until the close of business on June 3, 1991.

Re: Public Hearing: Proposal to
amend Chapter 8, "Elections"
of the Rockville City Code so
as to provide for same day
voter registration for City
elections; to provide that a
political committee or other

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organization may designate an affiliated political committee which would be subject to the campaign reporting requirements of the Code; and to amend the provisions concerning limit of contributions to change the current limit from \$1,000 to \$500 for any single candidate and the total which may be contributed by an individual or organization in any election cycle from \$2,500 to \$1,000.

The Mayor and Council conducted a public hearing regarding amendments to Chapter 8, "Elections" of the Rockville City Code so as to provide for same day voter registration for City elections; to provide that a political committee or other organization may designate an affiliated political committee which would be subject to the campaign reporting requirements of the Code; and to amend the provisions concerning limit of contributions to change the current limit from \$1,000 to \$500 for any single candidate and the total which may be contributed by an individual or organization in any election cycle from \$2,500 to \$1,000. The Mayor and Council heard all those persons as can be found in the official stenographic record. There being no other persons wishing to be heard, the Mayor closed the hearing, with the record to be left open for two weeks, until the close of business on June 3, 1991.

Re: Public Hearing: RTH-11-91,
James Impara, Applicant.

The Mayor and Council conducted a public hearing regarding the Applicant's request for approval of an exploratory application for 15 townhouses on 61,393 square feet of land, more or less, in the subdivision known as "Halpine Square," also presently known as 5918 and 5922 Halpine Road, Rockville, Maryland. The Mayor and Council heard all those persons as can be found in the official stenographic record. There being no other persons wishing to be heard, the Mayor closed the hearing, with the record to be

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left open for two weeks, until the close of business on June 3, 1991.

Re: Citizens' Forum

At this time, the Mayor opened the meeting to hear from any citizen who wished to address the Mayor and Council.

1. Michael Patterson, Chairperson of Rockville's Historic District Commission, presented the Mayor and Council with the 1991 Preservation Award to the City of Rockville in recognition of the valuable contribution to historic preservation in Montgomery County, Maryland, for restoration, upkeep and maintenance of the Beall-Dawson House. The award from Montgomery Preservation, Inc. was presented by Gilbert Gude at the 1991 Montgomery County Awards for Historic Preservation on Wednesday, May 15.

2. Ruth Hanessian, Vice President of Legislation, Rockville Chamber of Commerce, presented the Mayor and Council with copies of the newly published Rockville Community Guide 1991-1992.

At this time, at the Mayor's request, the City Manager outlined the contents of a letter hand delivered at 5:00 p.m. today from Montgomery County, Maryland, regarding the acquisition of the Hungerford-Stoneridge Swim Club (Item No. 6 on the Mayor and Council agenda). The City and County have a longstanding agreement with respect to the Ritchie Parkway project, and the County has requested that the acquisition be postponed for the following reasons:

- o additional monies required are not in the County's budget;
- o escalating costs of Ritchie Parkway over the years;
- o current agreement providing for County to share needed right-of-way and other construction costs. Although the letter indicates that the County wants to participate in evaluating alternatives to the purchase of the Swim Club property, the current agreement delegates responsibility of management of the project to the City, specifically including negotiation and acquisition of right-of-way.

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o obtaining independent appraisals on property. It is beyond the scope of the agreement for the County to request these appraisals as this responsibility has been delegated to the City.

o acknowledged unneeded portion of the proposed acquisition (2.5 acre residual). The City is not seeking reimbursement for the residual land from Montgomery County.

The City Manager commented that this agreement defines the scope of costs including land acquisition, design, engineering, etc., with the County contributing 70% of the costs.

3. Mike Melvin, 519 Baltimore Road, President of Rockville Baseball Association (RBBA), set forth the RBBA's position regarding the Senior Division organization and the Mayor and Council's directive to staff to form City teams to ensure that all individuals desiring to play were provided an opportunity.

Mr. Melvin went on to state that the RBBA is not a City agency or governmental unit that reports to the City; it is a private, volunteer organization. Therefore, the RBBA takes issue with the City's involvement with changes in its geographic boundaries, RBBA's traditional opening day ceremony and changes in rules and bylaws that govern on-field play (National Youth Sports Coaches Association (NYSCA) standards).

Following further statements by Mr. Melvin, Mayor Duncan noted that his concern was regarding the Senior Division, not the entire RBBA. He apologized if people were under the impression that there was concern about the RBBA as a whole. The only concern was that all youth who wanted to play would have that opportunity. Mayor Duncan indicated that the Mayor and Council would be happy to get together with Mr. Melvin and his Board. Mr. Melvin indicated that the RBBA would like the City to provide oversight, but they disagree with use of the Recreation and Park Advisory Board.

Mayor Duncan responded to Mr. Melvin's comments regarding the boundary issue, NYSCA standards and the rededication ceremony of Dogwood Park which was done in

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conjunction with RBBA opening day ceremonies.

4. Frank Scioli, 1050 Carnation Drive, elaborated on the NYSCA standards issue noting that while they strongly endorse NYSCA, they disagree with standards where they are not consistent with the City's needs.

Mr. Scioli then detailed statistics regarding the Senior Division. Discussion ensued regarding the RBBA's use of "select" teams, and Mr. Scioli commented that it was never their intention to exclude any kids.

Mayor Duncan indicated that it was the City's intention to ensure that all individuals had an opportunity to play and, by forming City Senior teams, another option is available.

5. Ralph Schrader, RBBA, noted that the term "select" was an inaccurate term. He went on to review some of the financial considerations involved in running a league to RBBA standards. More than 1100 youngsters are served at a very cost-effective rate.

Mayor Duncan agreed that the RBBA puts forth a great deal of effort resulting in a significant savings. However, the City provides a tremendous amount of support to RBBA. Mayor Duncan reiterated his concern that some youngsters felt they had been excluded and apologized for the perception that he was criticizing the entire RBBA.

Councilmember Marrinan emphasized the need to establish a formal relationship that clearly sets forth the respective responsibilities of all parties. Councilmember Hovsepian indicated the concern on the part of the Mayor and Council that no relationship existed between the RBBA and the City. Councilmember Robbins agreed that the Council needs to look at this issue in a worksession very soon. It was noted by Councilmember Coyle that, during a recent worksession with the Recreation and Park Advisory Board, it became evident that there are a number of groups which provide services for the City and there is no mechanism in place for accountability. There will be across-the-board discussions regarding the development of formal arrangements for all such groups.

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6. Glenn Cade, Past President of RBBA, commented that there was never a full and fair investigation into the complaints against RBBA. Mayor Duncan responded that a recent managerial issue was never fully presented to the RBBA Board by the complainant despite the fact that, in meetings with Mike Melvin, Frank Scioli and Mr Brand, it was agreed that the former manager would be allowed to present his case.

7. Charlie Treat, 37 Eton Overlook, a coach and secretary of the Board, commented that he would welcome a study of the RBBA's relationship with the City and suggested that an independent consultant be used for such a review. He also noted that the RBBA meetings are open to anyone who wishes to attend.

8. Rob Wong, director of the RBBA's instructional league, discussed the number of hours volunteers spend in coaching the RBBA teams.

9. Garry Elliott, President of West End Citizens Association (WECA), referenced Item 6 on the agenda, approval of a contract to purchase the Hungerford-Stoneridge Swim Club. He commented that the City had conducted several public hearings to determine the best course of action to replace the wetlands. On November 20, 1990, WECA testified regarding their support of the decision of the Mayor and Council not to convert four acres of Dogwood Park to replace wetlands destroyed by the construction of Ritchie Parkway. The State has approved the plan for the use of the Swim Club site as acceptable wetlands, and WECA once again voices opposition to conversion of any active parkland for this use.

10. Paul Legendre, 822 Carter Road, President of Hungerford-Stoneridge Swim Club, responded to some of the allegations made by Steve Abrams at the May 13 meeting regarding purchase by the City of the Hungerford-Stoneridge Swim Club. He commented that the City followed its standard operating procedure and received two independent appraisals of the property. Although the sale price is below either appraisal, he felt there was an implication that the members of the Swim Club are trying to take advantage

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of the City. Before mitigation became an issue, the Swim Club was no longer a viable entity and informal bids had been received for the purchase of the property.

It is important to the neighborhood that at least three acres are preserved from development in light of the fact that they have lost their school and pool and now are being subjected to a new four-lane road. Therefore, they were willing to make a concession in price.

12. Randy Slovic, 9 Dairyfield Court, indicated her support for the purchase of the Hungerford-Stoneridge Swim Club. She went on to comment that destruction of the wetlands necessitating this purchase could have been avoided by a rerouting of Ritchie Parkway.

13. David Morganwalp, 907 Leverton Road, referenced the legal obligations of the City in complying with its wetlands permits. In his experience with EPA and as a professional groundwater hydrologist, he stated that the wetlands regulations will probably become even more stringent. Failure to comply with the terms and conditions of the City's wetlands permit could result in legal action by EPA.

The hydrology of the pool site is more suited for wetlands than the Dogwood Park alternative where there is a question of the water table and the proper type of soil to actually create wetlands.

His final recommendation to the Mayor and Council was to take action now.

14. Eleanor Northway, 903 Leverton Road, President of the Hungerford-Stoneridge Civic Association, thanked the Mayor and Council for the outstanding construction job at Dogwood Park; it is beautiful and picturesque.

Insofar as the wetlands mitigation is concerned, over the past year, the Hungerford-Stoneridge neighborhood has worked with the Mayor and Council and staff, received input from the Mayor and Council and provided input in this matter. All agreed that the best plan is to leave Dogwood Park as it is now and use the Swim Club for

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wetlands mitigation.

Councilmember Robbins commented that the issue last week was not whether the pool site was the most logical and proper alternative, but how it would be financed. Clarification and/or interpretation of the financial implications was required.

The principal issue, according to Councilmember Marrinan, was how the City would pay for the site and what projects in the CIP would have to be deferred as a result of this purchase. The policy not to disturb Dogwood Park but pursue the Swim Club has not changed.

15. Bill Meyer, 804 Leverton Road, referenced potential problems with any proposed delay of the project. The mitigation plan was submitted to the State Department of the Environment and approved based upon the use of the pool site which is hydrologically more suitable to wetlands than the park site.

16. David Thomas, 818 Brice Road, urged the Mayor and Council to save Dogwood Park and purchase the Swim Club property, thereby bringing this portion of the process to a close. The 6.3% of the total project costs required for this purchase is a small price to pay to remedy the destruction of the wetlands.

17. Mansfield Kaseman, 704 Carter Road, commented that it would be in everyone's best interests to approve the purchase of the Swim Club.

18. Earl Beck, 322 Grandin Avenue, referenced the paving of the east end of Highland Avenue and stated that while he is in favor of paving this road, he is opposed to paying for it.

Mayor Duncan responded that this issue would be discussed at the May 28 CIP budget worksession.

19. Steve Abrams, 2290 Dunster Lane, referenced a number of items with respect to the purchase of the Swim Club, including the agreement between the City and County for the construction of Ritchie Parkway and the issues raised in a letter today by

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Montgomery County. He questioned whether there was any cross membership between the executive committee of the Civic Association and the Swim Club and pointed to differentiation between persons speaking with a vested interest.

In other circumstances, where cities had concerns about policies affecting discharge permits under the Clean Water Act, they chose a strategy of deferral and non-compliance until the laws were changed. Mr. Abrams indicated that it is worthwhile for the City to take a risk and perhaps negotiate a better deal on a permit.

He went on to note that staff did not initially recommend the pool property for wetlands mitigation and questioned the value of this property. Through eminent domain, the City could take that portion of the Swim Club needed for mitigation, leaving the remainder of the land for the owners to market. Finally, he urged the Mayor and Council to follow the County's request and postpone a decision in this matter.

Mayor Duncan commented that the City could be subject to legal action by willfully violating the federal wetlands law.

20. Peter Boice, 721 Harrington Road, an environmental policy analyst, commented that by waiting, the wetlands mitigation regulations will most likely become more stringent. It is only with respect to agricultural land that the regulations may be relaxed. The cost of \$1.4 million is a small price to pay, and the Dogwood Park property is not a viable nor technically workable option.

21. Gene Thirolf, 407 Mercer Road, as a member of the Hungerford-Stoneridge Civic Association and Swim Club, commented that he thought the City policy of not using public parkland for road construction is sound.

22. Margie Hughes, 700 Carter Road, expressed concern regarding the use of Dogwood Park.

23. Stan Klein, 7 Lorre Court, commented that he felt that Mr. Abrams' earlier remarks were inappropriate.

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24. Kathleen Stetson, 1385 Kimblewick Road, noted that if the wetlands must be replaced, the City could make use of its power of eminent domain to acquire the three acres, thus saving the taxpayers a considerable amount of money. She also requested that the Mayor and Council defer action on this purchase.

25. Peter Boice, 721 Harrington Road, commented that, as a voter, he does not agree with the earlier suggestion that elected officials could risk not complying with the wetlands law and permit issued to the City.

26. Tom Conger, 201 Ritchie Parkway, member of the Hungerford-Stoneridge Civic Association and pool, expressed concern with issues raised regarding looking at ways to circumvent the law.

27. Steve Abrams, 2290 Dunster Lane, commented on eminent domain and the value of residual land.

There being no other citizens wishing to be heard, the Mayor closed the Citizens' Forum portion of the meeting.

Re: Motion to approve a contract to purchase a 5.5 acre parcel of land on Cabin John parkway from the Hungerford-Stoneridge Swimming Club, Inc. for the purchase price of \$1,400,000.

This acquisition is part of the Ritchie Parkway wetlands mitigation project. The purchase of this parcel will allow the creation of three acres of new wetlands which are part of a mitigation plan approved by the Maryland Department of the Environment. Councilmember Hovsepian noted her concern was whether the purchase was financially viable and how much the citizens of Rockville would be paying. This information had not previously been made public. It was not her intention to reconsider the use of Dogwood Park; she merely wanted the public to be aware of what the City is doing and have an opportunity to comment. The information has been prepared and available since last Tuesday.

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As changes occur, Councilmember Hovsepian hopes that the City will be amenable to looking at all options to ensure the most environmentally sound results. The price for the purchase of the Swim Club, which she has been opposed to from the start, necessitates the sale of the residual 2.5 acres in her opinion.

At Councilmember Hovsepian's request, the City Manager outlined the construction and design timetable as follows: the permit of February 21, 1989 provides for a deadline of February 1992 for construction of the wetlands. However, with approval of the wetlands mitigation plan only recently received, the City is somewhat behind schedule. Now, with the approval of the wetlands mitigation package, the City will: hire consulting engineers to do design plans; may acquire additional easements; conduct a rereview process with interested neighborhoods; go out for bid on the plans and specifications. Construction will not occur until 1992, and, because the type of plantings the City intends to use are best suited for fall, it is unlikely that we will be in a position to complete the plantings until fall 1992. Therefore, the City will be asking for an extension of the February 1992 deadline. Although the State may be open to extensions, they will want to see progress on the construction. The City plans to demonstrate such progress with the hiring of the consultant and completion of the design.

At the request of Councilmember Marrinan, the City Manager outlined the previous occasions on which the wetlands mitigation plans were publicly discussed. Two formal public informational meetings were held followed by a significant staff report dated August 15, 1990. There were two advertised meetings of the Mayor and Council where key decisions were to be made, and every Mayor and Council meeting presented an opportunity for the wetlands mitigation issue to be discussed during citizens' forum.

The additional financial analysis provided by staff answered questions regarding how the City would pay for this acquisition and projected long-term revenues,

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all of which support the decision to move forward. Councilmember Robbins noted that the only new issue to come out this evening was the Montgomery County letter. He feels it is time to get on with the business of getting the road built and protecting the environment.

With respect to financial arrangements, Councilmember Coyle indicated that he previously had all financial information sufficient to make the judgment that this is a viable arrangement. Representatives of the pool and the City negotiated in good faith and reached a fair and beneficial agreement for all parties. The City can now move forward with the decision to replace the wetlands without excavating Dogwood Park.

Councilmember Marrinan commented that the principal reason for deferring this decision at the last meeting was because it was unclear how the City would pay for the purchase. Nothing he has heard tonight would change his opinion.

This process started last May, noted Mayor Duncan, with the plan recommended by staff to mitigate wetlands displaced by Ritchie Parkway construction. A public informational meeting was held on May 22, at which the Mayor and Council were asked about the use of Hungerford-Stoneridge Swim Club as opposed to Dogwood Park. It took staff some time to put together a report answering questions from the May meeting, during which time staff completed the in-house appraisal of the Hungerford-Stoneridge Swim Club valued at \$1.6 million. This information was made available to the mailing list in August. In September, another public informational meeting was held. Discussion on the wetlands mitigation appeared as an agenda item at a Mayor and Council meeting in October, at which the City Manager was requested to obtain appraisals of the Swim Club. A public hearing on the wetlands mitigation was held in November and included information on the Swim Club appraisal. On January 14, the Mayor and Council reviewed certain items regarding the plan which was to be submitted to the State for approval. In between, there were many opportunities at meetings to provide input. The City made every effort to ensure that

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the public had an opportunity to comment.

As to whether the City needs Ritchie Parkway, Mayor Duncan indicated his support of the road to relieve congestion. With the construction of the road comes the responsibility to mitigate wetlands. In 1988, a permit was received from the Corps of Engineers and, in 1989, a Water Quality Certificate was issued to the City for the taking of wetlands for the Ritchie Parkway project. In staff discussions today with the Corps of Engineers, it was made clear that the City has a specific responsibility under the permit it has been issued now that construction has commenced. The penalty for willful violation of the federal wetlands law and permit can be incarceration.

From a policy point of view, it is important in Rockville to try to minimize loss of active parkland. The City is known for its beautiful parks, and it is not sound policy to take parkland to build roads. The same holds true if the City were to build Cabin John Lake. A minimum of nine acres of wetlands would have to be replaced at one to one mitigation, and use of parkland for mitigation should not be considered.

The cost of purchasing the Hungerford-Stoneridge Swim Club is \$1.4 million, which cost is built into the CIP over the next five-six years. However, it is necessary to shift and defer some projects in the CIP in order to pay for this purchase upfront. The County's share of the costs is approximately \$9 million and the State's \$3 million. Of the approximate \$12 million cost to the City, over \$8 million will be returned by special assessments. Thus, City taxpayers are responsible for between 15% and 18% of the costs of the entire project.

The City intends to hold the County to its committed share of the project, and Mayor Duncan feels confident that the County Council will honor this commitment. The County will not be asked to contribute to the residual 2.5 acres which can be sold with the City retaining the proceeds.

The issue of eminent domain was raised. The last time this was used in the

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City was 1984. The City's policy has been to reach a fair agreement with owners of property, and in 90% of the cases the City has been able to do so. It is a testament to the City Manager and City Attorney that we do not have to resort to eminent domain frequently. The price of \$1.4 million is less than the two appraisals, and the City Manager and City Attorney negotiated a fair and reasonable price.

The public policy the City is facing is where to get the land needed for wetlands mitigation. It was suggested last week that we go back to Dogwood Park which is short-sighted. Mayor Duncan stated that he supports acquisition of the Swim Club and hopes the decision will be made tonight.

Councilmember Hovsepien commented that she had not heard any overwhelming response to the City spending the funds necessary to acquire the Swim Club and, therefore, reluctantly votes in favor of the purchase.

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, the Mayor and Council approved the acquisition of a 5.5 acre parcel of land on Cabin John Parkway from the Hungerford-Stoneridge Swim Club for the purchase price of \$1.4 million.

Re: FYI/Correspondence

Councilmember Marrinan requested that the Falls Road at Kersey Lane Traffic Signal be included in the Project Status Report.

Re: New Business

Mayor Duncan referenced the opening of the gorgeous new recreational pool at the Municipal Swim Center last weekend which is a tremendous addition to the facility. He encouraged everyone to go out and take a look.

Hometown Holidays begins Saturday morning, and everyone is encouraged to come out and attend the festivities and the Memorial Day Parade on Monday. On Saturday, June 1, the Farmers Market opens for the season.

Re: Next Meeting

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Budget worksessions will be held on Tuesday, May 21, Tuesday, May 28, and Tuesday, June 4. On June 10, the Mayor and Council will adopt the FY92 operating budget and FY92-97 CIP. Also on that date, there will be a briefing by the State Senator and Delegates regarding this year's General Assembly session.

Re: Adjournment

There being no further business to come before the Mayor and Council, the meeting was adjourned at 11:35 p.m., to convene again in Worksession at 7:30 p.m. on May 21, 1991, or at the call of the Mayor.